

## Memorandum

*Flex your power!  
Be energy efficient!*

**To:** BILL BRONTE  
Chief  
Division of Rail

**Date:** January 14, 2010

**File:** P3000-0384

**ORIGINAL SIGNED BY:**

**From:** GERALD A. LONG  
Deputy Director  
Audits and Investigations

**Subject:** Final Report - Division of Rail Program Evaluation

Attached is Audits and Investigations' final program evaluation report of the Division of Rail. Your response has been included as part of our final report.

Please provide our office with status reports on the implementation of your audit finding dispositions 60, 180, and 360 days subsequent to the report date. If all findings have not been corrected within 360 days, please continue to provide status reports every 180 days until the audit findings are fully resolved.

We thank you and your staff for their assistance provided during the audit. If you have any questions or need additional information, please call Laurine Bohamera, Chief, Internal Audits, at (916) 323-7107, or me at (916) 323-7122.

**Attachment**

**c:** Randell H. Iwasaki, Director  
Cindy McKim, Chief Deputy Director  
Brenda Schimpf, Bond Program Manager, Proposition 1B Office  
Laurine Bohamera, Chief, Internal Audits, Audits and Investigations  
Douglas Gibson, Audit Manager, Proposition 1B, Audits and Investigations

<b>P 3000-384</b>
<b>Division of Rail Program Evaluation</b>
<b>January 2010</b>

**Gerald A. Long**

**Deputy Director**

**Audits and Investigations**

**California Department of Transportation**

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## **Summary**

Audits and Investigations has completed a program evaluation of the California Department of Transportation's (Department) Division of Rail (Rail). The purpose of the program evaluation was to evaluate the adequacy of Rail's internal controls to determine whether policies, procedures, and processes are in place to meet selected program requirements, with an emphasis on Proposition 1B bond requirements.

Our program evaluation disclosed that Rail's policies, procedures, and processes are generally adequate, except for the following issues:

Lack of Delegated Authority to Execute Contracts

Lack of Centralized Database for Contracts

Compliance with Conflict of Interest Directive not Documented

## **Background**

Rail has an annual operating budget of approximately \$120 million, of which \$105 million is for contract services. The division manages and coordinates intercity rail passenger services that help to improve the State's air quality and reduce highway congestion and fuel consumption. Rail manages two State supported routes operated by Amtrak, and financially supports a third. Rail also provides staff support functions to the San Joaquin Valley Rail Committee, which consists of representatives of counties along the San Joaquin Route. Rail capital projects are contracted with the owners of the rail lines, and are exempt from competitive bidding. Rail manages its capital projects and intercity rail passenger services via contracts with railroad companies, intracity rail operators, Amtrak, and a joint powers authority.

Rail's purpose is to improve intercity rail transportation throughout the State by working with Amtrak and local agencies to improve the quality and quantity of train service. To Rail, that means more and better trains and train frequencies; new and improved stations, cars, locomotives, improved railroad safety; and better coordination between local bus, trolley and subway services and Amtrak intercity service.

The Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006, approved by the voters as Proposition 1B in November 2006, included \$250 million for the Highway-Railroad Crossing Safety Account (HRCSA) for the completion of high-priority grade separation and railroad crossing safety improvements; and \$400 million for Intercity Rail Improvement projects within the Public Transportation Modernization Improvement and Service Enhancement Account (PTMISEA) for intercity rail improvements, with the provision that \$125 million be used for the procurement of additional intercity railcars and locomotives.

**Background  
(Continued)**

In 2007, the Legislature enacted implementing legislation, Senate Bill 88, that designated the California Transportation Commission (CTC) as the administrative agency responsible for programming HRCSA funds and the agency authorized to adopt guidelines for the program. The Department is the administrative agency for PTMISEA; however, the CTC functions as the administrative agency for the Intercity Rail Improvement projects by programming the funds and adopting the guidelines for the program.

Proposition 1B projects will be incorporated into the existing Rail project management process, as an additional fund source. At the time of our fieldwork, baseline agreements were under negotiation for both the HRCSA and Intercity Rail Improvement projects.

Rail consists of four offices. The first two offices identified below have responsibility for Proposition 1B projects.

**Office of Rail Capital Project Development, Operations and Marketing** - This office performs the planning, programming and development of intercity rail capital projects, including assisting local agencies in implementation of capital projects. The office also provides marketing and public relations services for intercity rail and connecting buses to increase ridership, as well as monitoring train and bus services for quality and consistency.

**Office of Rail Equipment and Track Construction** – This office administers the grade crossing hazard elimination programs, as well as providing in-house support and review to ensure that Rail projects comply with environmental law. It administers the procurement, acquisition, overhaul, and maintenance of Department owned locomotives; and ensures that passenger rail track and infrastructure construction projects meet contract specifications, and that passenger rail cars and stations comply with requirements of the Americans with Disabilities Act. The office also negotiates, implements, and oversees track and signal improvements on Amtrak carrier railroads, which improve Amtrak service.

**Office of Planning and Policy** - This office oversees long range capital and operations planning and development of policies and procedures related to intercity passenger rail.

**Office of Modal Administrative Services** - This office provides administrative, financial and analytical support to Rail.

## **Objectives, Scope, and Methodology**

We performed this program evaluation in accordance with the International Standards for the Professional Practice of Internal Auditing. The objectives were to:

- Determine whether Rail has clearly defined roles and responsibilities.
- Determine if there is an effective and efficient organizational structure to carryout the program responsibilities.
- Assess compliance with applicable policies and procedures with particular emphasis on Proposition 1B requirements.
- Determine whether Rail has policies, procedures, and processes in place to ensure:
  - Achievement of roles and responsibilities.
  - Effective control and accountability for funds received and spent.
  - Funds are accurately reported in accordance with applicable guidelines.
  - Adequate project monitoring.
- Evaluate the process of reporting project status for timeliness, completeness, accuracy, and compliance with milestones and other performance measures.
- Determine how Rail manages risk in quality, scope, schedule, and cost in order to attain successful project completion.

Our evaluation focused on contracts and included those executed as of October 2008. To achieve the objectives of the evaluation, we performed the following:

- Interviewed Rail management to gain an understanding of its roles and responsibilities within the Department.
- Reviewed and evaluated a sample of current contracts.
- Reviewed and evaluated procedures utilized by contract managers.
- Reviewed policies and procedures applicable to the Department's Conflict of Interest and Economic Interest Directives.

## **Conclusion**

Our review disclosed that Rail's policies, procedures, and processes are generally adequate, except for the following issues:

- Lack of Delegated Authority to Execute Contracts
- Lack of Centralized Database for Contracts
- Compliance with Conflict of Interest Directive not Documented

Rail should address the deficiencies outlined in the bullets above, and in more specific detail, in the findings and recommendations section of this report.

**Views of  
Responsible  
Officials**

We requested and received a response from the Chief of the Division of Rail to the findings discussed in this report. The Chief has, in general, acknowledged the findings and recommendations. Please see attachments for complete responses.

**ORIGINAL SIGNED BY:**

**GERALD A. LONG**  
**Deputy Director**  
**Audits and Investigations**

**April 14, 2009**  
**(Last Day of Audit Field Work)**

## **FINDINGS AND RECOMMENDATIONS**

### **Finding 1 - Lack of Delegated Authority to Execute Contracts**

The Division of Rail's (Rail) various programs are primarily delivered by contractors external to the California Department of Transportation (Department), however, it does not have delegated authority to execute contracts other than for Intercity Passenger Rail Facility Agreements (IRPFAs). An IRPFA is defined as an agreement between the Department and a public entity, (e.g., city, county, or joint power agency) for intercity rail services. The Division of Procurement and Contracts (DPAC) delegated the authority to execute IRPFAs to the Rail Program Manager in a letter dated July 20, 2000. While this letter delegates contracting authority from DPAC to Rail for the IRPFA contracts, the authority for executing contracts with railroads for track and equipment, grade crossings, and Amtrak contracts has not been delegated.

We reviewed executed contracts as of October 2008 for rail capital projects within Rail; Title 23, United States Code, Section 130 grade crossings; California Streets and Highway Code Section 190 grade separations; annual operating contracts for the San Joaquin, Pacific Surfliner, and the Capitol Corridor routes. Our review found that these contracts were executed by Rail without delegated authority, with the exception of IRPFA's and AMTRAK contracts, which were handled appropriately.

Public Contract Code grants the Department authority to execute contracts. The Service Contract Managers Handbook identifies the Department's Procurement and Contracting Officer as the Chief of DPAC and fixes responsibility for the implementation of and adherence to all laws, rules, and policies concerning service contracts.

Without proper review by DPAC to ensure adherence to all laws, rules, and policies, the contracts executed by Rail may not protect the State's rights.

Rail was under the impression it had been delegated the authority to execute all rail contracts. However, the documentation provided by staff to substantiate the delegation of authority only discussed Rail's contract exemption from competitive bid provisions. It appears Rail incorrectly interpreted an exemption from competitive bid regulations to include delegated contracting authority.

### **Recommendation**

We recommend Rail submit all contracts to DPAC prior to execution, unless specific delegated contract authority has been received.



**Rail's Response**

Rail is working with the premise that the Decision Document, dated October 21, 2001, regarding Reassignment of Project Delivery Railroad Functional Activities from Division of Engineering Services and Division of Local Assistance also included delegation of authority to execute contracts.

Rail also provided additional information concerning the AMTRAK operating agreement. A copy of the agreement, which was approved by the Department Contract Officer, DPAC, was provided.

**A&I Analysis**

While the Decision Document transferred the Project Delivery Railroad Functional Activities, there is no documentation that delegation of authority from DPAC to execute contracts was given to Rail.

It is noted that Rail provided documentation that they are submitting AMTRAK operating agreements to DPAC for approval.

**Finding 2 -  
Lack of  
Centralized  
Database for  
Contracts**

Rail does not maintain a central database identifying all of its contracts. Instead, each office (or sometimes contract manager) maintains a list of contracts they are responsible for with varying degrees of detail. In reviewing the lists maintained by individual contract managers, we discovered the data tracked was inconsistent. For example, contract managers tracked one or more, but not all, of the following attributes:

- Contract amount
- Contract allocation by year
- Federal obligation amount
- Contractor
- Amount paid to date
- Execution date
- Expiration date
- Amendments

The State Contract Manual, Section 9.09, RECORD KEEPING states,

“A. Each agency is responsible for maintaining all invoices, records, and relevant documentation for three years after the final payment under the contract. The following format is recommended for the maintenance of contract records: ... 2. Prepare a computer file of all contracts administered. This practice allows easy access to management information, such as expenditures, contract expirations, and contract renewals.”

**Finding 2 -  
Lack of  
Centralized  
Database for  
Contracts  
(Continued)**

Since Rail has not established a centralized contract database, there is no assurance that all contracts within the division are accounted for. To illustrate, during our fieldwork, we learned that a contract manager needed to take over the workload of another employee who left the Department suddenly. In this instance, only the contracts on the employee's list were transferred and there was no assurance that the workload transferred included all contracts managed by this employee.

A significant portion of the Rail program is delivered through multi-year contracts with external entities. As such, it is critical that all contracts are identified to allow for adequate Department-wide contract management. Without a comprehensive database of contracts, there is no easy access to information needed for management reporting and oversight of contracts, such as expenditures, contract expirations, and contract renewals. A single centralized listing of contracts would allow for consistent information to be tracked and reported, as well as assurance that there is a complete inventory of all contracts.

**Recommendation**

We recommend Rail develop a centralized database of contracts.

**Rail's Response**

Rail concurs with the recommendation. Rail will develop a centralized database of contracts.

**Finding 3 –  
Compliance with  
Conflict of Interest  
Directive not  
Documented**

Rail could not document compliance with the Department's directive on incompatible activities and conflict of interest.

We found that staff in headquarters may be responsible for assisting in preparing procurement documents (selecting projects to be funded) and are responsible for reviewing and approving invoices for reimbursement of State and federal funds.

Deputy Directive 09-R3, Incompatible Activities and Conflict of Interest, cites the policy that Department employees do not willfully engage in any employment of activities . . . that are or give the appearance of being incompatible or in conflict with their duties as State employees . . . or that have an adverse effect on the confidence of the public in the integrity of government. Specifically, managers and supervisors are responsible to ensure that their subordinates are informed of and comply with department policy and federal and State laws, regulations, and policies regarding conflict of interest and incompatible activities.

**Finding 3 –  
Compliance with  
Conflict of Interest  
Directive not  
Documented  
(Continued)**

Conflict of Interest Statement Certification, ADM-3043, states, Staff involved in soliciting bids, preparing procurement documentation, approving procurement documents, receiving goods/services, approving payment, and/or making the payment are required to maintain this signed Conflict of Interest Certification on file for review.

Rail was unaware there was a form to complete, which would document compliance with the Department's directive on conflict of interest. Failure to have employees read and sign the Conflict of Interest Statement Certification, ADM-3043, may result in staff not obtaining a good understanding of conflicts of interest with their duties involving approving procurement documents and/or approving payment. In addition, form ADM-3043 provides management documentation that conflict of interest policies were acknowledged.

**Recommendation**

We recommend Rail maintain completed Conflict of Interest Statement Certification forms on file for all employees involved in any aspect of the procurement process, specifically approving payment.

**Rail's Response**

Rail concurs with the recommendation. Rail will have staff complete a Conflict of Interest Certification form to keep on file for all employees involved in any aspect of the procurement process, specifically approving payment.

**Audit Team**

Laurine Bohamera, Chief, Internal Audits  
Paula Rivera, Audit Supervisor  
Don Daily, Auditor

## Memorandum

*Flex your power!  
Be energy efficient!*

**To:** GERALD A. LONG  
Deputy Director  
Audits and Investigations

**Date:** January 5, 2010

**ORIGINAL SIGNED BY:**

**From:** WILLIAM D. BRONTE  
Chief  
Division of Rail

**Subject:** Draft Program Evaluation Report of the Division of Rail (DOR)

The Draft Program Evaluation Report of the DOR has been reviewed and responses are listed below.

**Finding 1 – Lack of Delegated Authority to Execute Contracts**

Attached is the Decision Document regarding: Reassignment of current Project Delivery Railroad Functional Activities, including the transfer of the State Highway portion of the Federal funding programs, 130 Grade Crossing program for State Highway (on system) and 190 Grade Separation (on & off system) programs from Division of Engineering Services (DES), Railroad Agreements Branch, to DOR.

We have been working with the premise that this Decision Document transferred the authority from DES and Division of Local Assistance. We will confirm with both Divisions that the authority has been transferred.

In the meeting, November 17, 2009, we talked about the AMTRAK Operating Agreement did not go through DPAC. Attached, is the Agreement with the approval from the Department Contract Officer, Division of Procurement and Contracts.

**Finding 2 – Lack of Centralized Database for Contracts**

The DOR will develop a centralized database of contracts.

**Finding 3 – Compliance with Conflict of Interest Directive not Documented**

The DOR will have staff complete a Conflict of Interest Statement Certification form to keep on file for all employees involved in any aspect of the procurement process, specifically approving payment.

**Attachments**

## **DECISION DOCUMENT**

**To: BRENT FELKER**  
Chief Engineer  
Project Delivery

**Date: October 17, 2001**

**BRIAN J. SMITH**  
Deputy Director  
Planning and Modal Programs

**From: ROBERT L. BUCKLEY**  
Chief  
Division of Engineering Services

**BRICE PARIS**  
Chief  
Division of Right of Way

**WARREN WEBER**  
Chief  
Division of Rail

**Subject: Reassignment of current Project Delivery Railroad Functional Activities**

### **PROBLEM STATEMENT:**

Railroad delays in executing Right of Way (R/W) documents and in issuing Railroad Agreements threaten Department project delivery schedules.

### **QUESTION:**

Will a different Caltrans organizational structure for the various Railroad activities currently performed by Division of Engineering Services (DES) facilitate project delivery transactions with the Railroads, and provide other internal efficiencies?

### **RECOMMENDATION:**

Approve transfer of the following activities from DES to R/W and to Division of Rail (DOR). Specific implementation plans will be developed and submitted by the R/W and by the DOR following this approval of the conceptual transfer.

Transfer Railroad Construction and Maintenance (C&M) and Services Contract document preparation and approvals from DES, Railroad Agreements Branch, to R/W. (Alternative "E", Utility Model).

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Transfer the State Highway portion of the Federal funding programs, 130 Grade Crossing program for State Highway (on system) and 190 Grade Separation (on & off system) programs from DES, Railroad Agreements Branch, to DOR.

Retain railroad engineering plan review activities in DES.

**FISCAL IMPACT:**

None. No anticipated net increase in Capital Core Program Resource Requirements. Transfer of existing DES staff, or transfer of equivalent PY resources to R/W and DOR.

**ORGANIZATIONAL IMPACT:**

Transfers DES C&M Agreement and Service Contract responsibility to R/W; transfers Grade Crossing and Grade Separation programs responsibilities to DOR; requires re-assignment of associated DES staff or equivalent PY resources to R/W and DOR.

**PROPOSED IMPLEMENTATION SCHEDULE:**

Implementation plans from R/W and DOR containing specific implementation schedules and staffing requirements will be developed following this conceptual plan approval.

For the purposes of this conceptual plan approval, it is estimated that necessary staff transfers and reassignments, the training of newly assigned functional staff in Headquarters and/or the Districts, and the issuance of Division Operational Guidelines will occur over an approximate 6 month implementation period.

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**APPROVAL RECOMMENDED:**

**ORIGINAL SIGNED BY:**

**ROBERT L. BUCKLEY**

Chief

Division of Engineering Services

10/26/01  
DATE

**ORIGINAL SIGNED BY:**

**BRICE PARIS**

Chief

Division of Right of Way

10-15-01  
DATE

**ORIGINAL SIGNED BY:**

**WARREN WEBER**

Chief

Division of Rail

10/24/01  
DATE

**CONCUR:**

**ORIGINAL SIGNED BY:**

**BRENT FÉLKER**

Chief Engineer

Project Delivery

10-26-01  
DATE

**ORIGINAL SIGNED BY:**

**BRYAN J. SMITH**

Deputy Director

Planning and Modal Programs

10/30/01  
DATE

**PROBLEM:**

Union Pacific Railroad Company (UP) has recently initiated a policy of refusing to execute C&M Agreements or issue Rights of Entry which would allow public transportation projects (Project Delivery) to proceed on schedule, and will apparently challenge and attempt to set aside court Orders for Possession (OP), all for the purposes of influencing R/W compensation settlement negotiations. In a current case where the Department proceeded with an OP, UP's contract attorneys were successful in temporarily staying the order on a technicality, delaying a bridge widening project, even though UP does not oppose the project or its construction.

*The Railroad's recent tactic of obstructing and delaying public transportation projects to maximize negotiation leverage is internal to UP, and independent of any Caltrans organizational structure. Local Agencies are also experiencing similar problems as expressed by Commissioner McKenna at the June, California Transportation Commission (CTC) meeting. The Department's current and long standing organizational structure with separate but parallel Engineering Agreement and R/W Divisions closely emulates the Railroad's organizational structure, and has served the Department well over the years with an outstanding project delivery record. We believe that the current issues involving UP are of a temporary nature and will ultimately be resolved when elevated to an appropriate level within UP's Management.*

We expect the Railroads to execute C&M Agreements, and grant Rights of Entry as soon as UP's or other Railroad's engineering review and approvals are complete. In instances where compensation issues cannot otherwise be resolved in good faith, the courts determine just compensation under applicable statutes. *In prior years this was the normal business practice with Railroads.*

Specific Identified Project Delivery Problems with Union Pacific Railroad:

1. Aggressive negotiating tactics by UP's Real Estate department, attempting to maximize compensation leverage in each transaction by not executing the C&M Agreements.
2. Inadequate UP Railroad Real Estate staffing (2 servicing 23 States).
3. No UP Railroad delegated authority to the Western Region - all authority is retained in Omaha Headquarters Office.
4. UP Railroad Real Estate & Engineering organizational structure conflicts and internal levels of cooperation.
5. Inconsistent fees' & document requirements by UP from District to District.



**POSSIBLE PROJECT DELIVERY SOLUTIONS IDENTIFIED:**

1. Increase emphasis on early delivery of Railroad design requirements.
2. Close communication and coordination between Agreements and R/W.
3. Following initial Railroad Acquisition offers, The Department needs to aggressively proceed with legal actions, OP's, and California Public Utilities Commission (CPUC) Orders concurrent with continuing negotiations.
4. Constructive discussion and agreement with appropriate levels of Railroad Management on:
  - A. Separation of Railroad Engineering review from Real Estate negotiations.
  - B. Recommend delegated approvals to Railroad's CA. Representatives (R/E's, low value parcels, etc.).
  - C. Standardize real estate appraisal approaches, transaction approval processes and documents.
  - D. Possible R/W PYE for UP Real Estate employee in CA., with proper delegated authority.
5. The Department should concurrently evaluate potential Railroad legislative remedies similar to Streets and Highways Code 671.5, which provides that upon Caltrans failure to respond to an encroachment permit application within 60 days the permit is deemed to be approved.

**DISCUSSION:**

Timely delivery of both Division of Engineering Service's (DES) Rail Agreements and Division of R/W property rights are critical to accomplishing the Department's Project Delivery mission and schedules. *The Department recognized the need for single management and accountability for all Project Delivery activities in its recent reorganization, which placed all Project Delivery related activities under a single Deputy Director.*

The Railroads UP negotiating position and lack of timely processing of necessary agreements has placed this delivery Statewide in jeopardy. With the Department under pressure publicly and politically to deliver it's Programs it is imperative the Department constructively and cooperatively pursue negotiated agreements with the Railroads. If negotiations are unsuccessful then the Department must be in a position to quickly pursue legal action through Eminent Domain laws and CPUC Work Authorization Orders.

There could be benefits to the department if all Railroad project delivery related functions were put under single Division Management within the Project Delivery Team (PDT), similar to Utility Relocation responsibilities moving to R/W in the 1980's. However, in the case of the

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**Railroads there appear to be an equal number of organizational disadvantages to each of the alternatives identified.**

**EXISTING PROJECT DELIVERY FUNCTIONAL UNITS INVOLVED IN RAILROAD NEGOTIATIONS:**

**Right of Way (R/W):**

In addition to a Statewide Railroad Coordinator in Headquarters, R/W has one Railroad Agent in each of the (12) Districts, of which approximately half are dedicated full time with the remainder of the agents working on a variety of other R/W duties in addition to Railroads. The Railroad Agents act as the single focal point for all District railroad engineering plan submittals and R/W coordination activities for their District (13 staff positions). The Railroad Agent is a member of the PDT, performing all real estate related Project Delivery activities required for acquiring and clearing the project right of way. This entails starting the involvement at the project conceptual and environmental stages, attending all PDT and Railroad Advisory Team (RAT) meetings, meeting with Railroad field representatives, estimating Railroad involvement and preparing R/W property estimates for the R/W Data Sheet. Early in the project development process R/W obtains Environmental rights of entry and permits, and participates in Public Hearings.

Additionally, in accordance with all Federal and State laws which govern these activities, R/W prepares Appraisals, conducts property owner Negotiations and Acquisitions, obtains Resolutions of Necessity from the CTC, files and serves suit papers, assists Legal with Condemnation preparations, acts as and/or obtains Expert Witnesses for Condemnation trial, and administers the Uniform Relocation Act (URA). R/W acts as liaison concerning the construction obligations agreed to in the various R/W and Agreements documents.

On an annual basis it is estimated that some form of property right is required from the Railroad's on over 50 projects annually. R/W statewide average's 60-railroad involvement's including licenses, rights of entry, R/W contracts and deeds, Resolutions of Necessity and other R/W Agreements. In addition R/W is involved on numerous projects when work is within property rights previously acquired and no additional rights are needed, but close coordination and compliance with existing agreements is required.

**The Railroad Agreements Branch:**

The Railroad Agreements Branch is in the DES, under Earthquake Engineering and Design Support and Office of Structure Contract Management. The Branch consists of one Senior Transportation Engineer Supervisor, three Senior Bridge Engineers, four Transportation Engineers and three support staff positions (11 staff positions).

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The Railroad Agreements Branch is responsible for obtaining Railroad engineering approval Statewide for all projects that have Railroad involvement. This includes grade separated and at grade projects, preparation of Section 13 of the Special Provisions, addressing all the Railroad's requirements pertaining to the Department and its Contractor in the form of Railroad Clauses and Insurance Provisions, managing contracts for Railroad review of structure plans, liaison with District Design Engineers on railroad design issues, negotiating and preparing approximately 30 construction and maintenance agreements and 65 service contracts annually, preparing and coordinating submittal to obtain necessary (CPUC) approval through Headquarters Legal, liaison with district Project Engineers on railroad issues, responsibility for all agreements with Railroads and the Department on roadway projects., managing the Federal 130 Grade Crossing program for State Highway (on system) and Grade Separation (on & off system) programs.

The Branch is also responsible for maintaining annual service contracts with all Railroads to facilitate structure maintenance to perform their annual bridge inspection program on state highways, to coordinate engineering inspection and flagging support for projects under construction. All payments to the Railroad companies for the work negotiated in either the C&M agreements and/or service contracts are approved and recommended for payment by this branch.

The majority of the section's work involves obtaining engineering approval for structure work from the Railroads and the related specification work. The typical sequence for this has the section coordinating with the districts and structure design to determine which projects will likely have railroad involvement. Once the structure general plans are developed with the Railroad's requirements, they are submitted to the Railroad for approval. The district R/W Office is informed of the approval so that they can proceed with any property acquisition needed. The right of way work proceeds in parallel to preparing the necessary agreements, specifications and CPUC package. Any right of way acquisition information is forwarded to the agreement section so it can be included in the Railroad agreement.

#### **POSSIBLE ALTERNATIVE ORGANIZATIONAL STRUCTURES:**

The following Alternatives have been identified to consider if there is a different or better organizational structure which would allow the department to more effectively deal with the current Railroad's position in a more timely, uniform, and efficient manner.

##### **Alternative A:**

No change. The Railroad Agreements Section is currently within Project Delivery, Division of Engineering Services, reporting to Structure Contracts Management Branch. This branch is responsible for technical oversight and contract management of consultant designed bridge work. Railroad Agreements works with the consultant-designed work but the majority is with in-house designed structure work.

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Pro Arguments:

No disruption to current operations. Parallels Railroad organizational separation of Engineering and Real Estate activities. This alternative has served the Department well over the years with an outstanding project delivery record.

Con Arguments:

Status quo; may not organizationally be reactive to Railroads current negotiating position.

Fiscal Impact: NONE

Alternative B:

Relocate Railroad Agreements internally within DES to Structure Specifications & Estimates. The Agreements Branch negotiates the construction and maintenance agreements with the Railroads, and is not involved in specification engineering.

Pro Arguments:

No disruption to current operations. Maintains close nexus with Structure Design.

Con Arguments:

May not organizationally be reactive to Railroads current negotiating position. Internal operational change within DES.

Fiscal Impact: NONE

Proposed Implementation Schedule:

Immediate. Physical relocation may not be necessary.

Alternative C:

Transfer Railroad Agreements and staffing from DES to HQ R/W. This alternative merges DES Railroad Agreements section staff and work, within HQ R/W. This alternative would allow closer R/W management and coordination of C&M and Service Agreements with R/W functions, but divide R/W Project Delivery Management responsibility between the Districts and HQ.

Pro Arguments: R/W Program Manager would ultimately be responsible for all Railroad project delivery conflicts. May improve communication/teamwork between Agreements, HQ R/W, & District R/W.

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Con Arguments: Results in Engineering Project Delivery line operation (Agreements) reporting to policy oversight R/W manager. Organizationally combines District R/W functional line activities and HQ R/W policy oversight. Removes the unit from engineering support functions. Impacts to individuals training, rotations, & career development opportunities and may cause staff to leave the unit. Having HQ R/W agreement with DES to allow Engineering rotations may help alleviate this.

Fiscal Impact:

Requires existing positions and support funding transfer from DES to R/W.

Proposed Implementation Schedule:

Immediate. Physical relocation may not be necessary.

Alternative D:

Transfer DES activities and staff to the Regions and Districts. Reorganize Railroad Agreements under HQ R/W, placing Agreement Engineers in the Districts/Regions as Senior Specialists. Section's work would be coordinated and merged with the work of the District R/W agents. This alternative would allow a stronger coordination of railroad-related engineering and real estate functions acting as a Railroad team within the District R/W offices.

Pro Arguments: Division of R/W Manager ultimately responsible for all Railroad Project Delivery conflicts. Continues Railroad Agreements oversight for policy, procedures and standards in HQ with Regions and Districts. Improves communication/teamwork between Agreements, HQ R/W, & District R/W. Districts get the benefit of on site agreement team member. Possible savings on travel time & dollars.

Con Arguments: May require additional total Agreements staffing, and would exclude Region and District Agreement line staff from District Director control. Requires creating a senior level Agreements position(s) within Hq'trs to review, coordinate and prioritize statewide Railroad conflicts. Removes the unit from engineering support functions. Requires staff relocation or transfers. Strong commitment to communication between units can help avoid separation problems. Impacts to individuals training, rotations, & career development opportunities and may cause staff to leave the unit. Creating the positions as Senior Specialists would alleviate this.

Fiscal Impact:

Minor. Upgrades current Associate level positions to Senior Specialists.

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Organizational Impact:

Some impact. Moves the Agreements Branch to another Division outside of DES.

Proposed Implementation Schedule: Immediate. Physical relocation may not be necessary.

Alternative E (Utility Model):

Retain engineering review in DES, transfer Agreement document preparation and approvals to Region/District R/W. Transfer only Railroad C&M and Service Agreement document preparation and approvals to Regions/Districts R/W, without Engineering staff transfers. Engineering plan review responsibility remains with an Engineering Program, either in Hq'trs or the Districts. Requires creating a R/W Railroad Agreements Coordinator position(s) within Hq'trs to review, coordinate and prioritize statewide Railroad conflicts.

Pro Arguments: Engineering plan review expertise remains an engineering responsibility under engineering management. Groups all Railroad contracting activities (real estate and agreement) and project delivery responsibilities performed by R/W Agents under R/W Management.

Con Arguments: Engineering plan development and timely response to Railroad's plan review issues are outside R/W management control. Experienced Railroad Engineers and R/W Agents disagree on the qualifications of R/W Agents to develop and administer C&M Agreement specifications. Probably initially require an extensive training and transition period, and effect future R/W Agent rotational flexibility.

Fiscal Impact:

Requires position and support funding transfer from ES to R/W.

Organizational Impact:

Some impact. Eliminates the Agreements Branch, re-assigns current Agreements staff to other DES functions.

Proposed Implementation Schedule:

Begin immediately, phasing to full implementation through training and guideline development. Continue using Agreements Engineers and transition the work to R/W Agents. Approximately 6 Months.

Alternative F:

Transfer DES Agreements and associated Railroad R/W responsibilities to RAIL.

Pro Arguments: Provides single Division Manager for Agreements and R/W activities.

Con Arguments: Does not include other Rail related functions such as Local Assistance or Mass Trans Railroad involvement. *Splits current Project Delivery Deputy Director accountabilities, and defeats the purpose of the Departments reorganization to place all Project Delivery Division's under a single responsible Deputy Director.* Divides Division of R/W and DES staff and responsibilities between two Transportation Core Programs. Conflicts with separation of R/W appraisal and acquisition functions, or would require contracting for services. Requires District R/W staff reassignment to HQ's RAIL. Removes Project Delivery staff from District Director control.

Fiscal Impact:

Requires position and support funding transfer from ES and R/W to Rail.

Organizational Impact:

Eliminates the HQ's Agreements Branch, re-assigns current Agreements staff to other DES functions. Requires transfer of HQ R/W Railroad Coordinator and District R/W Railroad Agents to RAIL.

Proposed Implementation Schedule:

Begin immediately, phasing to full implementation through training and guideline development. Continue using Agreements Engineers, HQ and District R/W to transition the work to Rail. Approximately 6 Months.

Performance Measures:

Same as existing. Timely completion of Railroad's Engineer's approval and Section 13. No delays to PS&E resulting from the Railroad agreement process.

Contact: Vern Rhinehart, Chief, Project Delivery, Right of Way. (916) 654-4456.

AMOUNT ENCUMBERED BY THIS DOCUMENT	\$62,719,960
PRIOR AMOUNT ENCUMBERED	\$ 000
TOTAL AMOUNT ENCUMBERED	\$62,719,960



**NATIONAL RAILROAD PASSENGER CORPORATION  
and  
THE STATE OF CALIFORNIA**

**AGREEMENT FOR THE PROVISION OF  
RAIL PASSENGER SERVICE**

**THIS AGREEMENT** made as of the first day of October 2009, by and between the National Railroad Passenger Corporation, a corporation organized under the Rail Passenger Service Act (recodified at 49 U.S.C. § 24101 ~~et seq.~~) and the laws of the District of Columbia and having its principal office and place of business in Washington, D.C. (hereinafter referred to as "Amtrak"), and the State of California acting by and through its Department of Transportation (hereinafter referred to as "the State").

**WHEREAS**, the State has requested that Amtrak provide rail passenger service beyond that included in the Amtrak basic system for the benefit of persons traveling to, from and within the State; and has provided to Amtrak adequate assurances as to the State's resources to reimburse for certain proportions of the associated operating losses (expenses not covered by revenue) of such service levels, as more specifically defined herein and minor capital costs; and

**WHEREAS**, the State is authorized by applicable state law to enter into an agreement with Amtrak on the terms and conditions hereinafter set forth and funds for this purpose have been made available by the State as set forth herein; and

**WHEREAS**, the parties wish to provide for certain described daily bus service between statewide points to connect with the aforesaid rail passenger service, the cost of which will be borne by the State.

**NOW THEREFORE**, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

**SECTION 1 – SERVICE TO BE PROVIDED**

- (a) Subject to Federal funding that is not significantly less than the FY09 appropriation level, Amtrak shall provide rail passenger service over the route(s) set forth in Appendix I incorporated by reference and attached hereto and substantially in accordance with the schedules jointly developed and agreed to by Amtrak and the State prescribed in Appendix I. Amtrak shall not be required to increase the frequency of any of the schedules except pursuant to a mutually agreed and amended Appendix I made pursuant to Section 11 hereof; provided, however, that this shall not preclude Amtrak from providing such increased scheduled service at its own cost and expense.
- (b) Amtrak shall exercise its best efforts to provide rail passenger service of high quality. Amtrak and the State shall jointly approve in writing decisions impacting

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives in multiple original counterparts as of the day and year first above written.

NATIONAL RAILROAD PASSENGER CORPORATION

Dated: 10/1/09

By: [Signature]  
Joseph Boardman  
President and Chief Executive Officer

Approved as to Form: [Signature]

By: [Signature]  
Amtrak Law Department

and

STATE OF CALIFORNIA

Dated: 11/23/09

By: [Signature]  
Department Contract Officer  
Department of Transportation

Approved as to Form:

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Matthew B. George  
Deputy Attorney  
Department of Transportation

**CONTRACT APPROVALS**

ADM-0363 (REV. 2/02)

CONTRACTOR

Amtrak Rail Passenger Corporation (AMTRAK)

DISTRICT/DIVISION/OFFICE

RAIL

CONTRACT NUMBER

75A0305

CONTRACT MANAGER PHONE NUMBER  
(916)654-6932

CONTRACT MANAGER NAME

Emily Burstein

**LEGAL - APPROVED BY / TITLE**

"I have reviewed and approved the contract."

SIGNATURE / ORIGINAL SIGNED BY:

PRINT NAME Matthew E. GeorgeTITLE Deputy AttorneyDATE 24 Sept '09, Dec 2 '09**CONTRACT MANAGER'S APPROVAL**

"I have reviewed and approve this contract."

SIGNATURE / ORIGINAL SIGNED BY:

PRINT NAME Emily BursteinTITLE Rail Transportation Manager I  
Division of RAILDATE 10/14/09

(BRIEF LETTER TO APPROVER)

APPROVER'S COMMENTS